

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Case No. 20-cr-0034 (WMW/KMM)

Plaintiff,

v.

ORDER

Scott Allen Klinghagen,

Defendant.

Defendant Scott Allen Klinghagen previously requested relief pursuant to 28 U.S.C. § 2255. (Dkt. 58.) On November 21, 2022, the Court denied certain of Klinghagen’s claims as untimely, and denied one claim on the merits. (Dkt. 81.) The Court concluded that a final claim—that Klinghagen’s attorney provided ineffective assistance of counsel by failing to file a notice of appeal after being asked to do so—could not be adjudicated without an evidentiary hearing. (*Id.*) Three issues arising out of the Court’s November 21, 2022, Order remain to be resolved (Dkts. 83, 84):

First, under Rule 8(c) of the Rules Governing Section 2255 Proceedings for the United States District Courts, “[i]f an evidentiary hearing is warranted, the judge must appoint an attorney to represent a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A.” Klinghagen qualifies financially for appointment of counsel, and an evidentiary hearing will be necessary for adjudication of Klinghagen’s final claim for relief under 28 U.S.C. § 2255. Accordingly, the Court will appoint counsel to represent Klinghagen in prosecuting that final claim for relief. Klinghagen is warned, however, that

because he has been appointed counsel, he will only be permitted relief through that counsel. Klinghagen will not be permitted to proceed on his remaining claim through self-representation and through appointed counsel simultaneously. *See United States v. Summage*, 575 F.3d 864, 876 (8th Cir. 2009).

Second, Klinghagen states that he was not properly served with a copy of the August 29, 2022 declaration of Kenneth U. Uboibok, and he asks that the Court provide a copy of this declaration to him. The Court grants Klinghagen's motion, and the Clerk of Court will be directed to provide one copy of the declaration to Klinghagen.

Third, Klinghagen requests that the Court revisit its finding that certain of his claims for relief were untimely pursuant to § 2255(f). The Court remains satisfied that Klinghagen has not at any point in this proceeding articulated a basis upon which to find that the limitations period should have been equitably tolled. Therefore, this final motion will be denied.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED:**

1. Kyle White, Attorney ID 22599X, is appointed as counsel to represent defendant Scott Allen Klinghagen, pursuant to 18 U.S.C. § 3006A, in the prosecution of Klinghagen's remaining claim for relief under 28 U.S.C. § 2255.

2. Klinghagen's motion (Dkt. 83) for a copy of the declaration of Kenneth U. Uboibok is **GRANTED**. The Clerk of Court is directed to send Mr. Uboibok's declaration, (Dkt. 80), to Klinghagen.

3. Klinghagen's motion for reconsideration pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, (Dkt. 84), is **DENIED**.

Dated: January 24, 2023

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge